IN THE HIGH COURT OF JUDICATURE AT BOMBAY
NAGPUR BENCH, NAGPUR

Second Appeal No. 663/2004

Notes, Office Memoranda of Coram, appearances, Court's orders or directions and Registrar's orders.	**Court's or Judge's Orders.**

CORAM : **A.P. Lavande,J**
DATE : 29th November, 2006

Heard Shri B.S. Bramhe, learned counsel for the appellant and Shri P.B. Patil, learned counsel for the respondent.

2. By this appeal, the appellant takes exception to the Judgment and decree dated 7th September, 2005 passed by the Additional District Judge, Buldhana in Regular Civil Appeal No. 38/2001 dismissing the cross objection filed by the appellant herein.

3. The respondent/ plaintiff filed the Regular Civil Suit No. 270/2000 against the appellant/defendant for recovery of past and future pension amount and other ancillary reliefs. The plaintiff claimed to be legally wedded wife of Namdeo Helode who was in service of Public Works Department, Buldhana. Namdeo expired on 27.4.1995 while on duty. The plaintiff averred that the defendant claimed herself to be the wife of Namdeo. Since the pension amount was being paid to the defendant the plaintiff filed the above suit for declaration that she alone was entitled to

the past and future pension amount. The suit was contested and the trial court partly decreed the suit and held that the plaintiff and defendant were entitled to half share each since the defendant was a nominee of deceased Namdeo.

4. Aggrieved by the said Judgment and decree passed by the trial Court an appeal was preferred to the District Court by the plaintiff. In the said appeal, the appellant herein filed cross objection claiming entire amount of pension. The lower appellate court after hearing both the sides dismissed the appeal as well as cross objection. The lower appellate court held that the findings given by the trial court were proper and as such the plaintiff and defendant were entitled to half share each in the amount payable on account of death of the deceased Namdeo. Aggrieved by the dismissal of the cross objection the original defendant has preferred the present second appeal. Mr. Bramhe, learned counsel for the appellant submitted that lower appellate court ought to have awarded the entire pension amount to her inasmuch as she was the nominee of deceased Namdeo and as such the lower appellate court erred in rejecting the cross objection filed by the defendant and the trial court has erred in partly decreeing the suit. He, therefore, submitted that the findings given by the lower appellate court as well as by the trial court that the plaintiff is entitled to half share in the pension amount is unsustainable in law and, therefore, the

decrees passed by the trial court as well as by the lower appellate court deserve to be quashed and set aside by allowing the cross objection filed by her before the lower appellate court.

Considering the submissions made by the learned counsel, I am of the opinion, that there is no merit in the present appeal. The trial Court, in my opinion, was justified in holding that the plaintiff being legally wedded wife of deceased Namdeo and the defendant being the nominee of deceased Namdeo were entitled to half share each in the pension amount payable on account of the death of Namdeo. This finding given by the trial court and confirmed by the lower appellate court cannot be said to be perverse warranting interference in second appeal. The findings given by both the courts below are borne out from the evidence on record and cannot be said to be unsustainable in law. Therefore, there is no merit in the present appeal. No substantial question of law is involved in the present appeal. Hence, the appeal is dismissed.

C.A. No. 8246/2004:

In view of the dismissal of the appeal nothing survives in this application. Hence, the same is dismissed as infructuous.

Judge

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